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Attorney for Plaintiff  
DONNA MATHEWS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DONNA MATHEWS,  
Plaintiff,

vs.

PAN AMERICAN LIFE INSURANCE  
COMPANY; and DOE 1 through Doe 20,  
Inclusive,

Defendants.

No. C 07-02757 SBA

DECLARATION OF MICHAEL E.  
KINNEY IN OPPOSITION TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

Date: June 10, 2008  
Time: 1:00 p.m.  
Ctm: 3

I, Michael E. Kinney, declare:

1. I am an attorney licensed to practice before this Court, and the attorney of record for Plaintiff herein.

2. On or about August 24, 2007, Defendant produced documents pursuant to an Initial Disclosure under Rule 26 of the Federal Rules of Civil Procedure. Among the documents produced by Defendant at that time were copies of records from Dr. Steven Smith and Dr. Barry Brown, who are two of Plaintiff's treating physicians. A true and correct copy of the first page of the records received from Dr. Smith, stamped PAL0549, is attached hereto as Exhibit A. A true and correct copy of the first page of the records received from Dr. Brown, stamped

1 PAL0562, is attached hereto as Exhibit B. Both of these documents bear a stamp showing they  
2 were received on May 23, 2006. Defendant did not produce any medical records that indicated  
3 that Defendant had received them at any time between May 23, 2006 and July 12, 2006.

4 3. Also produced by Defendant as part of its Initial Disclosure were  
5 documents entitled Accident and Health Claim Check Request Work Sheet. One of such  
6 documents, stamped PAL0048, is attached hereto as Exhibit C.

7 4. On March 14, 2008, I was present at the Deposition of Elaine Bourg. A  
8 true and correct copy of excerpts from the reporters transcript of that deposition, consisting of  
9 pages 23 through 25, is attached hereto as Exhibit D.

10 5. Attached hereto as Exhibit E is a true and correct copy of the legal  
11 services agreement under which my firm is representing the Plaintiff in this matter. A copy of this  
12 document was provided to Defendant prior to the close of discovery. Plaintiff has incurred attorney  
13 fees and costs in connection with enforcement of the contract against Defendant.

14 6. On March 13 and March 14, 2008, I attended the deposition Pan  
15 American Life Insurance Company in this matter. Defendant designated Cory Simon pursuant to  
16 Rule 30(b)(6) of the Federal Rules of Civil Procedure to testify on its behalf on the following  
17 subjects:

18 (a) The manner in which claims are generally handled under a Disability  
19 Income Policy such as that which is the subject of this lawsuit;

20 (b) The manner in which claims are generally handled under an Income  
21 Protection Policy such as that which is the subject of this lawsuit;

22 (c) PAN AMERICAN LIFE INSURANCE COMPANY's understanding and  
23 interpretation of the following language from the Income Protection Policy: "We will  
24 pay for a rehabilitation program that we approve. Maximum payment for a single  
25 disability will be 24 times the Monthly Benefit. With our permission this maximum  
26 may be waived. This payment will have no effect on any other benefit of this policy;"  
27 and,

28 (d) PAN AMERICAN LIFE INSURANCE COMPANY's understanding and

1 interpretation of the following language from the Disability Income Policy: "We will  
2 pay for a rehabilitation program if we approve it in advance. The extent of our  
3 payment will be what we state in our written approval. We will not pay for any  
4 rehabilitation benefits covered by another source. This payment will have no effect on  
5 any other benefit of this policy."

6 7. At said deposition, Defendant designated Michael Jones pursuant to Rule  
7 30(b)(6) of the Federal Rules of Civil Procedure to testify on its behalf on the following subject:

8 The claims presented by Plaintiff herein which are the subject of this lawsuit.

9 8. Submitted herewith are true and correct copies of the depositions of Pan  
10 American Life Insurance Company, designated as the deposition of Cory Simon, Vol. 1 and 2 and  
11 the deposition of Michael Jones, Vol. 1 and 2, together with the Exhibit Book appended thereto,  
12 labeled Deposition Exhibit 1 through 41. All of the documents bearing a stamp beginning with the  
13 letters PAL were produced by Defendant in this matter from its file. All of the documents bearing  
14 a stamp beginning with the letter M were produced by Plaintiff. The documents have been  
15 redacted so as not to reveal Plaintiff's address, phone number, social security number or date of  
16 birth. No other redactions have been made. The deposition of Cory Simon, Vol. 1 is filed  
17 herewith as Exhibit F. The deposition of Cory Simon, Vol. 2 is filed herewith as Exhibit G. The  
18 deposition of Michael Jones, Vol. 1 is filed herewith as Exhibit H. The deposition of Michael  
19 Jones, Vol. 2 is filed herewith as Exhibit I. A true and correct copy of the Exhibit Book is  
20 identified as Exhibit J for purposes of this filing.

21 If called as a witness, I could and would testify competently to the foregoing.

22 I declare under penalty of perjury under the laws of the State of California and the  
23 United States that the foregoing is true and correct.

24 Dated this 20th day of May at Santa Rosa, California.

25  
26 /s/\_\_\_\_\_  
Michael E. Kinney  
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